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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18	Ivan Peña, et al.,)	Case No. 2:09-CV-01185-FCD-KJM
19	Plaintiffs,)	
20)	<u>EXHIBIT D</u>
21	v.)	
22)	In Support of Plaintiffs' Motion
23	Wilfredo Cid,)	For Summary Judgment
24	Defendant.)	
25	_____)	

26 Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs



State of California Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify: SELECTED PAGES, SENATE FLOOR ANALYSES SB 489, 2003

That the attached transcript of 9 page(s) is a full, true and correct copy of the original record in the custody of this office.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

APR 10 2009

Handwritten signature of Debra Bowen in cursive script.

DEBRA BOWEN
Secretary of State

SENATE RULES COMMITTEE

SB 489

Office of Senate Floor Analyses
1020 N Street, Suite 524
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UNFINISHED BUSINESS

Bill No: SB 489
Author: Scott (D), et al
Amended: 8/18/03
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 5/6/03

AYES: Vasconcellos, Burton, Romero, Sher

NOES: McPherson

NO VOTE RECORDED: Margett

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 23-16, 6/2/03

AYES: Alarcon, Alpert, Bowen, Burton, Cedillo, Chesbro, Dunn, Escutia,
Figueroa, Florez, Karnette, Kuehl, Machado, Murray, Ortiz, Perata,
Romero, Scott, Sher, Soto, Speier, Torlakson, Vincent

NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham, Ducheny,
Hollingsworth, Johnson, Knight, Margett, McClintock, McPherson,
Morrow, Oller, Poochigian

NO VOTE RECORDED: Vasconcellos

ASSEMBLY FLOOR: 44-34, 9/4/03 - See last page for vote

SUBJECT: Semiautomatic firearms: chamber load indicators and
magazine disconnected mechanisms

SOURCE: Brady Campaign to Prevent Violence, United with the
Million Mom March
Coalition to Stop Gun Violence

CONTINUED

DIGEST: This bill adds to the existing “unsafe handgun” law requirements for semiautomatic pistols, as specified.

Assembly Amendments (1) expand and is more specific in the definition of a “chamber load indicator,” (2) change the operative date from January 1, 2005 to January 1, 2006, and (3) add co-authors.

ANALYSIS: Existing law provides that, commencing January 1, 2001, no “unsafe handgun” may be manufactured or sold in California by licensed dealer, as specified, and requires that the State Department of Justice (DOJ) prepare and maintain a roster of handguns which are determined not to be unsafe handguns. Private party sales and transfers of handguns through a licensed dealer or sheriff in small counties are exempted from those restrictions.

Existing law provides that for purposes of the “unsafe handgun” law, new models of the previously tested handguns must be submitted for testing, as follows:

“Penal Code section 12131.5. (a) A firearm shall be deemed to satisfy the requirements of subdivision (a) of Section 12131 (listed on Department of Justice roster as not an ‘unsafe handgun’) if another firearm is made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm only in one or more of the following features:

1. Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
2. The material from which the grips are made.
3. The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
4. Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

CONTINUED

- (b) Any manufacturer seeking to have a firearm listed under this section shall provide to the Department of Justice all of the following:
1. The model designation of the listed firearm.
 2. The model designation of each firearm that the manufacturer seeks to have listed under this section.
 3. A statement, under oath, that each unlisted firearm for which listing is sought differs from the listed firearm only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed firearm.
- (c) The department may, in its discretion and at any time, require a manufacturer to provide to the department any model for which listing is sought under this section, to determine whether the model complies with the requirements of this section.”

Existing law provides that all firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state, shall include or be accompanied by a firearms safety device that is listed on the DOJ’s roster of approved firearms safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the roster for use with the device, as specified.

Existing law provides that every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section.

This bill makes the following changes to the definition of “unsafe handgun” that may not be sold “new” in California:

CONTINUED

1. Commencing January 1, 2006, for a center fire automatic semiautomatic pistol that is not already determined not to be an unsafe handgun listed on the roster pursuant to Section 12131 DOJ roster of handguns found to not be “unsafe” and therefore available for sale new in California), it does not have either a chamber load indicator, or if it has a detachable magazine, a magazine disconnect mechanism.
2. Commencing January 1, 2007, for all center fire automatic semiautomatic pistols, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.
3. Commencing January 1, 2007, maintaining on the DOJ roster of firearms not found “unsafe” handguns listed pursuant to Section 12131 prior to that date.
4. Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the DOJ roster it does not have a magazine disconnect mechanism, if it has a detachable magazine.
5. Commencing January 1, 2007, for all rimfire semiautomatic pistols that have a detachable magazine, it does not have a magazine disconnect mechanism.

This bill adds the following definitions to the “unsafe handgun” law:

1. A “chamber load indicator” means a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable user of the pistol, without requiring the user to refer to a user’s manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.
2. A “magazine disconnect mechanism” means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

CONTINUED

3. A “semiautomatic pistol” means a pistol, as defined in subdivision (a) of Section 12001, the operating mode of which uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

This bill prohibits semiautomatic pistols from being submitted for testing pursuant to the “unsafe handgun” law unless they meet the following requirements:

1. Commencing January 1, 2006, no center fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have either a “chamber load indicator” or a magazine disconnect mechanism if it has a detachable magazine.
2. Commencing January 1, 2007, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have both a “chamber load indicator” and a magazine disconnect mechanism.
3. Commencing January 1, 2006, no rimfire semiautomatic pistol may be submitted for testing if it has a detachable magazine and does not have a magazine disconnect mechanism.

This bill makes related changes in law.

Prior Legislation

SB 510 (Scott), Chapter 608, Statutes of 2002. Passed the Senate on 5/30/01 with a vote of 24-11 (NOES: Ackerman, Brulte, Haynes, Johannessen, Johnson, Knight, McClintock, Monteith, Morrow, Oller, Poochigian). Provisions deleted in the Assembly.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 9/4/03)

Brady Campaign to Prevent Violence, United with the Million Mom March
(co-source)

Coalition to Stop Gun Violence (co-source)

American Academy of Pediatrics

Legal Community Against Violence

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California Chapter of the American College of Emergency Physicians
Firearms Law Center
Physicians for Social Responsibility
California Nurses Association
Women Against Gun Violence

OPPOSITION: (Verified 9/4/03)

BERETTA

California Sportsmen's Lobby
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition
Safari Club International
Sporting Arms and Ammunition Manufacturers' Institute
Sturm, Ruger and Company
TAURUS

ARGUMENTS IN SUPPORT: According to the author's office:

“From 1987 to 1996, nearly 2,200 American children 14 years of age and younger died from unintentional shootings. For every child who dies after being shot, an estimated 4 children are treated in U.S. hospitals for nonfatal gunfire injuries. In 1995 and 1996, 8,832 Californians were killed as a result of gunfire. According to data reported by hospitals to the California Department of Health Services, there were 13,153 nonfatal injuries which required hospitalization during the same period. About 10% of the injuries during that period of time were determined to be the result of unintentional shootings.

“Many of these injuries and deaths were the result of unintentional shootings by users who thought that the guns they fired were not loaded. Gun users are often unaware that semiautomatic weapons can be fired when their loading mechanism – the magazine – is removed or emptied. A live round of ammunition may remain in the chamber of the firearm after the magazine is removed. When the trigger of a semiautomatic firearm with a live round in its chamber is pulled, it will fire, even though it does not have a magazine inserted, unless the gun has a magazine disconnect mechanism.

“A 1997 survey by the Johns Hopkins Center for Gun Policy and Research and the National Opinion Research Center found that almost

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35% of respondents (who were all adults) either did not know that a gun could be fired, or believed that a gun could not be fired with the magazine removed. 28% of those respondents lived in households where guns were present. Undoubtedly, many of those households also included children.

“Teaching children how to "safely handle guns" is not the answer. Study after study has shown that gun safety programs for children are ineffective and may even increase the risk of unintentional firearm injury to children. In two recent experiments (one by the University of North Carolina and one by ABC News), guns were hidden in rooms where children were playing. Both studies found that children who previously had been taught not to touch guns and to instead immediately notify an adult are just as likely to handle guns than those who have not been so instructed. Another study released in July 2002 by the David and Lucille Packard Foundation found that parents overestimate the ability of their children to deal safely with guns. The report found that the easiest way to save lives is to make guns more “childproof” with built-in safety devices.

One such safety device is a chamber load indicator. A chamber load indicator alerts the gun user when there is a bullet in the firing chamber of the gun. Currently, chamber load indicators are installed on only about 11% all semiautomatic handguns. Chamber load indicators are effective safety devices. A 1991 General Accounting Office (GAO) study of shootings in 10 randomly selected cities across the nation found that 23% of the accidental shootings could have been prevented by chamber load indicators. The GAO report explained that “[a]lthough we cannot project to the country as a whole, were there actually to be the same ratio nationwide as in the 10 cities we studied, that would mean there were approximately 157,600 such injuries each year.’

“Magazine disconnect mechanisms prevent a semiautomatic weapon from being fired when its ammunition magazine is removed. They are passive safety devices, which require no training on the part of the user to be effective, which is particularly important to prevent accidents involving children. Magazine disconnect devices are currently installed on only about 14% of the semiautomatic handguns on the market.

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“Like chamber load indicators, magazine disconnect mechanisms are effective safety devices. Although there is no statistical data at this time about how many deaths the devices could prevent, a 1999 report by the Johns Hopkins Center for Gun Policy and Research concluded that magazine disconnect mechanisms are inexpensive and effective safety devices.”

ARGUMENTS IN OPPOSITION: BERETTA states that, “Beretta U.S.A. Corp. supplies pistols to the Los Angeles County and City Police Departments, the San Francisco Police Department, to the California Department of Corrections and to numerous other county and city law enforcement departments throughout California. We also provide a substantial number of the sidearms used by California citizens to protect themselves, their families and businesses and for recreational purposes.

“We recently received a copy of California Senate Bill 498, which seeks to require that magazine disconnect safety devices and loaded chamber indicators be added to handguns available for sale in California within the next few years. After reading the bill, we realize that it creates a potential financial liability for the State of California that may not have been considered by the sponsors of the bill.

“SB 489 calls any handgun that does not include a loaded chamber indicator and a magazine disconnect safety as ‘unsafe handgun’. Virtually no law enforcement handguns used in California have a magazine disconnect safety. Only some law enforcement handguns have loaded chamber indicators.

“By calling such guns ‘unsafe’, SB 489 will be used by plaintiffs’ attorneys as an admission by the State that handguns purchased for the police are, in fact, ‘unsafe’. Even though these are important firearm design considerations that argue against the use of these two features in a particular sidearm (for example, the design of some semi-automatic pistols makes a loaded chamber indicator impossible to incorporate due to the shape of the slide and for pistols that use a tip-up barrel), it will be difficult for a law enforcement department to argue such a defense if, for example, an accident occurs involving a police sidearm and the accident arguably involves the absence of one of these features when the state legislature has already agreed in advance that the gun is ‘unsafe’.

The U.S. Military uses Beretta pistols and requires that such pistols not have a magazine disconnect safety. This feature is also rejected by the Los

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Angeles and San Francisco Police Departments, as well as by numerous civilian users – namely, because they intend the pistol to fire in an emergency, with or without a magazine, in order to protect their lives. Most users of semiautomatic pistols expect the pistol to fire with or without a magazine. SB 489 confounds this commonplace expectation.

“People who want a pistol with a magazine disconnect safety can already purchase one. If, on the other hand, someone in California is injured or killed by an assailant because their pistol did not function as expected – namely, by discharging when the trigger is pulled, with or without the magazine—they will be able to thank the California legislature for making this choice for them.

“California already has an extensive system for testing and approving the safety of handguns sold in the State. We urge you to reject SB 489 because of the liability issues created for the State of California, its political subdivisions and its citizens.”

ASSEMBLY FLOOR:

AYES: Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Diaz, Dutra, Dymally, Frommer, Goldberg, Hancock, Jerome Horton, Jackson, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Matthews, Montanez, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pavley, Ridley-Thomas, Salinas, Simitian, Steinberg, Vargas, Wiggins, Wolk, Yee, Wesson

NOES: Aghazarian, Bates, Benoit, Bogh, Campbell, Cogdill, Correa, Cox, Daucher, Dutton, Garcia, Harman, Haynes, Houston, Keene, La Malfa, La Suer, Leslie, Maddox, Maldonado, Maze, McCarthy, Mountjoy, Nakanishi, Pacheco, Parra, Plescia, Reyes, Richman, Runner, Samuelian, Spitzer, Strickland, Wyland

RJG:cm 9/16/03 Senate Floor Analyses

SUPPORT/OPPPOSITION: SEE ABOVE

**** **END** ****